IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7385 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

AAREX LABORATORIES & 3 - Petitioner(s)
Versus
GENERAL CO.OPP.BANK LTD & 7 - Respondent(s)

==========

Appearance :

MR BP MUNSHI for Petitioner(s) : 1 - 4.
MR PV NANAVATI for Respondent(s) : 1,
MR VIBHUTI NANAVATI for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2 - 3,6 - 8.
MR DEVANG NANAVATI for Respondent(s) : 4,
MR MI PATEL for Respondent(s) : 5,

==========

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 02/11/2006

ORAL JUDGMENT

1. The petitioners herein are partnership firm and three of its partners. They challenge an order dated

22nd January 1992 passed by the Board of Nominees as upheld by an order dated 30th November,1992 passed by the Cooperative Tribunal.

2. Short facts leading to the petition are as follows:-

Petitioner No.1 is a partnership firm. Petitioner No.2 to 4 are some of its partners. Respondent No.1 Bank instituted lavad proceedings before the Board of Nominees to recover a sum of Rs.7,25,940.29 ps. with interest. This Lavad Suit No.1173/86 came to be decreed by the Board of Nominees by a judgment dated 14.9.88. This was an ex parte decree since the petitioners though had engaged an advocate, neither the petitioners nor the advocate had remained present on numerous occasions before the Board of Nominees.

3. It is the case of the petitioners that this decision was not communicated to the petitioners by the Board of Nominees for a long time and eventually under UPC, the same came to be received by the

petitioners on 27.7.89. The petitioners thereupon preferred an application for setting aside the ex parte decree before the Board of Nominees on 18.8.89.

4. The application of the petitioners came to be rejected by the Board of Nominees by judgment dated 22.1.92. The application was rejected solely on the ground of delay as the Board of Nominees was of the opinion that the petitioners failed to explain the delay in filing such an application.

5. The petitioners appealed against the said decision before the Cooperative Tribunal on 10.2.92. By judgment dated 30.11.92, the Cooperative Tribunal rejected the appeal and upheld the decision of the Board of Nominees to reject the application only on the ground of limitation. The petitioners preferred review application before the Cooperative Tribunal which also came to be rejected on 26.6.1995. The petitioners have therefore preferred this petition.

6. Learned advocate Shri Munshi for the petitioners submitted that under rule 41 of the Gujarat

Cooperative Societies Rules 1965 (for short Rules) it was incumbent on the Board of Nominees to communicate its decision through registered post on the petitioners. Admittedly, this was not done and the petitioners, therefore, had no knowledge about such a decision. Even if the mode of communication could have been through UPC, the same was received by the petitioners only on 27.7.89. The application of the petitioners for setting aside the ex parte decree filed on 18.8.89, therefore, could not have been rejected on the ground of delay. Reliance was placed on a decision of learned single Judge of this Court in the case of Amrutlal Mangalji Joshi v. A.T.B.S.Sahakari Mandali, AIR 1977 Gujarat 186.

7. On the other hand, learned advocate Shri Nanavati for respondent No.1 Bank opposed the petition. He submitted that all throughout the petitioners had prolonged the litigation. Though duly served, they had not appeared through their advocates before the Board of Nominees and even the application for setting aside the ex-parte decree was filed belatedly. He submitted that looking to the

conduct of the petitioners, no relief should be granted to them. In short, he supported the impugned orders. He also submitted that three of the partners of the firm have not challenged the decree and the decree being joint and several qua the partners who have acquiesced in the decree, in any case, no relief can be granted.

8. Having heard the learned advocates appearing for the parties, it would appear that though the Board of Nominees passed its ex-parte order on 14.9.88, admittedly, the same was not communicated to the petitioners for a long time. On the date of the decision, neither the petitioners nor their advocate was present. In terms of rule 41 of the Rules, it was necessary that the decision be communicated by the Board of Nominees. Rule 41 reads as follows:-

> "41. Procedure for hearing and decision:
>
> 1. The adjudicating shall record a brief note in English or in Gujarati language of the evidence of the parties and witnesses who attend and upon the evidence so recorded and upon consideration of any documentary evidence produced by either side, a decision shall be given in accordance with justice, enquiry and good conscience and it shall be reduced to writing. Such a decision shall be given in open court either at once or on

some future date of which due notice shall be given to the parties.

2. If any of the parties duly summoned or informed to attend fails to appear, the dispute may be decided in accordance with the relevant provisions of Order 9 of the Code of Civil Procedure 1908.

3. Where the adjudicating authority is a board of nominees consisting of the board of nominees of two nominees and if their opinions differ regarding the decision, the adjudicating authority shall return the case to the Registrar with its notes of dissent and thereupon the dispute may be decided by the Registrar or the case may be forwarded to a fresh board of three nominees for decision.

4. The decision shall be communicated to the parties by -

a) pronouncement of the award, or
b) registered post to any party which may be absent on the date if due notice of the decision is not given to such party.
c) Ordinary post which UPC to any party which may be absent on the date if due notice of the date of decision is given to such party.

5. After the decision of the case, if the adjudicating authority is a nominee or the board of nominees it shall return all the case papers to the Registrar."

In the decision in the case of Amrutlal Maganji Joshi (supra) also, learned single Judge of this Court came to the conclusion that the period of limitation would commence only upon the communication of the decision.

9. In the present case, even if it is accepted that the petitioners had the notice of the date of the decision of the Board of Nominees, the decision had to be communicated at least under UPC. Such communication was received by the petitioners on 27.7.89. They thereafter filed an application for setting aside the ex-prate decree on 18.8.89. Thus the application of the petitioners was within 30 days of the communication of the decision by the Board of Nominees. Such an application, therefore, could not have been rejected on the ground of delay. The Board of Nominees thus erred in rejecting the application only on this ground. The Cooperative Tribunal also erred in upholding such a decision of the Board of Nominees.

10. In above view of the matter, the impugned decisions are required to be and are hereby quashed. The proceedings are remanded to the Board of Nominees for consideration of the application for setting aside the ex parte decree on merits. The same will be decided expeditiously and preferably within a period of two months from the date of

receipt of a copy of this order. Since the petitioners have also shown negligence in participating in the proceedings before the Board of Nominees, even while allowing the petition, the petitioners are directed to pay cost of Rs.10,000/- (Rupees ten thousand) to respondent No.1 Bank. It is also clarified that this order will cover only the petitioners. Rule is made absolute to the above extent.

(Akil Kureshi, J.)

(vjn)